IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 359 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LIQ.OF NAVJIVAN MILLS EMPLOYEES'CO-OP.CREDIT&SUPPLY SOC. LTD - Applicant(s)

Versus

O.L. OF NAVJIVAN MILLS COMPANY LTD. & 1 - Respondent(s)

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Appearance :

MR DC DAVE for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR DS VASAVADA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/10/2006

ORAL JUDGMENT

1. By way of this application, the liquidator of the Navjivan Mills Employees' Co-operative Credit and

Supply Society Limited has prayed for an appropriate order earmarking, in all, the sum of Rs.19,32,542/- in favour of the applicant from the sum of Rs.27,74,250/- ordered to be paid to the workers of the Navjivan Mills Company Limited pursuant to an order dated 8th November, 2001 passed in Company Application No.214 of 2001.

2.It is the contention on behalf of the applicant that the aforesaid amount was due and payable to the society which is now ordered to be wound up and pursuant to the order passed by this Court, certain amount was ordered to be paid to the workers and therefore, the said amount should be paid to the applicant. Shri Vasavada, learned advocate appearing for the respondent No.2 has raised preliminary objection with regard to the maintainability of such an application in the Company Petition. It is submitted that such an application is not maintainable in the company jurisdiction proceedings. It is submitted that these are the dues, if any, of the co-operative society for which remedy lies elsewhere and therefore, it is requested to dismiss the present application.

3.Considering the fact that the alleged dues are of the

society, which is now ordered to be wound up, such an application in the Company Petition is not maintainable. The remedy, if any, available to the applicant is either to file suit and/or other remedy to recover the amount due and payable to the society, however, such an application with the prayer which is sought in the present application is not maintainable. Under the circumstances, without entering into the merits of the case and without affecting the rights of the applicant to recover the amount due and payable by the concerned workman, this application is dismissed.

[M.R.SHAH, J.]

kdc